

CV 13 - 4974

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
NORTH ATLANTIC OPERATING COMPANY,
INC., AND NATIONAL TOBACCO
COMPANY, L.P.,

Plaintiffs,

- against -

EVERGREEN DISTRIBUTORS, LLC;
DOUGLAS EZRING; NEW LINE FOOD
DISTRIBUTION, INC.; HOOKAH PLUS, INC.,
d/b/a HOOKAH PLUS; HUSSEIN HACHEM;
MANHATTAN WHOLESALE NY CORP.,
d/b/a MANHATTAN WHOLESALE, INC;
MAJID RASHIDZADA; MAJID HAROON; 23rd
ST. GENERAL MARKET & DELI CORP., d/b/a
GENERAL MARKET & DELI; GOURMET
FOOD MARKET; NEW STAR TOBACCO,
INC., d/b/a NEW STAR TOBACCO; and JOHN
DOES ONE through TEN, inclusive,

Defendants.
-----X

Civil Action No.:

ECF CASE

FILED UNDER SEAL

KORMAN, J.
SCANLON, M.J.

**DECLARATION OF STEVEN T. GNADINGER IN SUPPORT OF
MOTION FOR *EX PARTE* TEMPORARY RESTRAINING ORDER; ORDER
GRANTING *EX PARTE* SEIZURE; ORDER ALLOWING EXPEDITED DISCOVERY;
AND ORDER TO SHOW CAUSE FOR PRELIMINARY INJUNCTION**

I, Steven T. Gnadinger, hereby declare and state as follows:

1. I am over the age of eighteen (18) and am competent to attest to this Declaration.
2. I am the Manager of Product Integrity at Plaintiff National Tobacco Company, L.P. ("NTC") (together with Plaintiff North Atlantic Operating Company, Inc., "North Atlantic").
3. In this capacity, I am responsible for ensuring that all authentic ZIG-ZAG® 1 ¼ Size French Orange Cigarette Paper Products (defined as roll-your-own cigarette paper products

and accessories) (hereinafter, "ZIG-ZAG® Orange") meet with North Atlantic's precise quality standards and properly display the ZIG-ZAG® and NAOC® Trademarks (as defined in the simultaneously filed Declaration of Clark Sturdivant, sworn on September 5, 2013).

4. I am intimately familiar with the characteristic features of North Atlantic's high-quality, authentic ZIG-ZAG® Orange products and packaging, and I am able to distinguish between authentic ZIG-ZAG® Orange distributed by North Atlantic and counterfeit ZIG-ZAG® Orange based on a visual inspection.

5. As detailed below, I visually inspected the particular ZIG-ZAG® Orange products and packaging originating from:

- i. The Evergreen Defendants;¹ and
- ii. The Hookah Plus Defendants.²

6. I conclude, based on my specialized knowledge of North Atlantic's authentic ZIG-ZAG® products and packaging, that the particular products distributed by the Evergreen Defendants and the Hookah Plus Defendants are counterfeit, rather than genuine in nature.

A. Evergreen Defendants

7. On August 29, 2013, I received a United Parcel Service package containing two (2) sample cartons, representing 48 sample booklets, of ZIG-ZAG® Orange from Starco Impex Wholesale Outlet, 2710 South 11th Street, Beaumont, Texas 77701 ("Texas Wholesaler"). A

¹ Defendants Evergreen Distributors, LLC (individually, "Evergreen"), Douglas Ezring (individually, "Ezring"), and New Line Food Distribution, Inc. (individually, "New Line").

² Defendants Hookah Plus, Inc. (individually, "Hookah Plus"), and its owner, Hussein Hachem ("Hachem").

As further detailed in the simultaneously filed Declaration of John M. Hood III, sworn on September 5, 2013, Defendants Manhattan Wholesalers NY Corp., d/b/a Manhattan Wholesalers Inc., its owner, Majid Rashidzada, and its agent, Majid Haroon (together, the "Manhattan Wholesalers Defendants"), sold confirmed counterfeit ZIG-ZAG® Orange from their wholesale location at 121 West 27th Street, New York, New York. North Atlantic representatives who were on site several months ago physically observed counterfeit ZIG-ZAG® Orange on the shelves. However, North Atlantic representatives were prevented from purchasing any sample products by the Manhattan Wholesalers Defendants, and, when they returned to the premises, the counterfeit ZIG-ZAG® Orange was gone.

true and accurate copy of the shipping label affixed to the package is attached to this Declaration as Exhibit A.

8. The package contained an invoice and copies of shipping documents, which demonstrated that the sample cartons (i) originated from Defendants Evergreen and Ezring at 72 Longview Road, Port Washington, New York 11050; and (ii) were among 800 total cartons, representing 19,200 booklets, of ZIG-ZAG® Orange sold to the Texas Wholesaler by the Evergreen Defendants on August 22, 2013, at the below-market price of \$23.00/carton, or \$18,400.00. True and accurate copies of the invoice and shipping documents are attached to this Declaration as Exhibit B.

9. I am informed, and on that basis believe, that Defendants Evergreen and Ezring are acting in concert with Defendant New Line, and that the sample cartons of ZIG-ZAG® Orange I received from the Texas Wholesaler also originate from Defendant New Line.

10. I visually inspected the sample cartons and their contents (booklets and papers), and I conclude based on my specialized knowledge of North Atlantic's authentic ZIG-ZAG® Orange products and packaging that the sample cartons from the Evergreen Defendants are counterfeit, rather than genuine in nature, because, without limitation:

- i. The overall print quality of the sample cartons and booklets is poor relative to the print quality of authentic cartons and booklets of ZIG-ZAG® Orange distributed by North Atlantic;
- ii. The sample cartons and booklets are not coated with a characteristic ultraviolet varnish, which protects authentic cartons and booklets of ZIG-ZAG® Orange distributed by North Atlantic from fading;

- iii. When laid flat, the sample cartons are slightly shorter in height compared to authentic cartons of ZIG-ZAG® Orange distributed by North Atlantic;
- iv. The sample cartons also do not contain a characteristic unvarnished area with serial number, located underneath the UPC code, which appears on all authentic cartons of ZIG-ZAG® Orange distributed by North Atlantic;
- v. The perforations on the opening on the side of the sample cartons have small, straight-edged corners, while the perforations on the opening on the side of authentic cartons of ZIG-ZAG® Orange distributed by North Atlantic have smooth, rounded corners;
- vi. When laid flat, the sample booklets are slightly longer than authentic booklets of ZIG-ZAG® Orange distributed by North Atlantic;
- vii. The edges of the sample booklets lack perforation nodes, which are present on all authentic booklets of ZIG-ZAG® Orange distributed by North Atlantic;
- viii. The sample papers display a false watermark that appears to have been printed on the surface of the papers, whereas the watermark displayed on all authentic ZIG-ZAG® Orange papers is an actual watermark that has been stamped into the papers; and
- ix. The glue line on the sample papers is darker and thicker than the glue line on authentic ZIG-ZAG® Orange papers distributed by North Atlantic.

Photographs of the sample cartons and booklets distributed by the Evergreen Defendants next to photographs of authentic ZIG-ZAG® Orange cartons and booklets distributed by North Atlantic are attached to this Declaration as Exhibit C.³

³ The characteristics described in items (iii) and (vii) are not visible in the digital photographs taken of the products and require a visual inspection in person to observe.

B. Hookah Plus Defendants

11. On September 4, 2013, I received a Federal Express package containing one (1) sample carton, representing 24 booklets, of ZIG-ZAG® Orange from a North Atlantic representative.

12. The package contained a cover letter stating that the sample carton (i) was turned over to North Atlantic representative John M. Hood III at an interview held on June 5, 2013, by a defendant in North Atlantic's Eastern District of Michigan lawsuit (Case No. 1:13-cv-11791-GER-MAR) (filed April 22, 2013) (the "Michigan Action" and "Michigan Action Defendant," respectively); (ii) was one of 142 total cartons, representing 3,408 booklets, of ZIG-ZAG® Orange turned over by the Michigan Action Defendant at the June 5, 2013 interview; and (iii) was sold to the Michigan Action Defendant by the Hookah Plus Defendants.

13. I visually inspected the sample carton and its contents (booklets and papers), and I conclude based on my specialized knowledge of North Atlantic's authentic ZIG-ZAG® Orange products and packaging that the sample carton distributed by the Hookah Plus Defendants is counterfeit, rather than genuine in nature, because, without limitation:

- i. The overall print quality of the sample carton and booklets are poor relative to the print quality of authentic cartons and booklets of ZIG-ZAG® Orange distributed by North Atlantic;
- ii. The sample carton and booklets are not coated with a characteristic ultraviolet varnish, which protects authentic cartons and booklets of ZIG-ZAG® Orange distributed by North Atlantic from fading;
- iii. When laid flat, the sample carton is slightly shorter in height compared to authentic cartons of ZIG-ZAG® Orange distributed by North Atlantic;

- iv. The sample carton also does not contain a characteristic unvarnished area with serial number, located underneath the UPC code, which appears on all authentic cartons of ZIG-ZAG® Orange distributed by North Atlantic;
- v. The perforations on the opening on the side of the sample carton have small, straight-edged corners, while the perforations on the opening on the side of authentic cartons of ZIG-ZAG® Orange distributed by North Atlantic have smooth, rounded corners;
- vi. When laid flat, the sample booklets are slightly longer than authentic booklets of ZIG-ZAG® Orange distributed by North Atlantic;
- vii. The edges of the sample booklets lack perforation nodes, which are present on all authentic booklets of ZIG-ZAG® Orange distributed by North Atlantic;
- viii. The sample papers display a false watermark that appears to have been printed on the surface of the papers, whereas the watermark displayed on all authentic ZIG-ZAG® Orange papers is an actual watermark that has been stamped into the papers; and
- ix. The glue line on the sample papers is darker and thicker than the glue line on authentic ZIG-ZAG® Orange papers distributed by North Atlantic.

Photographs of the sample carton and booklets distributed by the Hookah Plus Defendants next to photographs of authentic ZIG-ZAG® Orange cartons and booklets distributed by North Atlantic are attached to this Declaration as Exhibit D.⁴

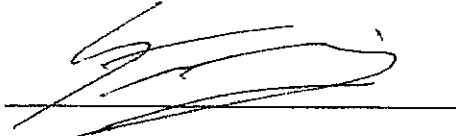
* * *

⁴ The characteristics described in items (iii) and (vii) are not visible in the digital photographs taken of the products and require a close, visual inspection in person to observe.

14. Because the samples I received for the Evergreen Defendants are virtually identical to the samples I received for the Hookah Plus Defendants, and I am informed, and on that basis believe, that both samples are virtually identical to the ZIG-ZAG® Orange papers and products distributed by the Manhattan Wholesalers Defendants, I conclude that it is probable that all products were manufactured and/or distributed, or originated from, the same, *i.e.*, a single source.

I declare under penalty of perjury that the foregoing is true and accurate.

Dated: September 5, 2013
Louisville, Kentucky

A handwritten signature in black ink, appearing to read 'STEVEN T. GNADINGER', is written over a horizontal line.

STEVEN T. GNADINGER

EXHIBIT A

1 LBS		1 OF 100		FOR UPS SHIPPING ONLY	
FROM: UPS SHIPPING (409) 840-9601 WHOLESALE OUTLET 2710 S. 11TH ST BEAUMONT TX 77701		SHIP TO: STEVE (000) 000-0000 NATIONAL TOBACCO 5201 INTERCH LOUISIANA		KEYED IN SHIPS	
KY 402 9-03		UPS EARLY A.M. 1+ TRACKING #: 1Z 28X 6X9 15 6285 9737		FOR UPS SHIPPING ONLY	
					
1 OF 100		BILLING: P/P		W/ 10.31 E 00 312013	
2A-1001		RED		LEFT	
12.28.56.9156.285		97.37		1003	
800		<input type="checkbox"/>		800	

EXHIBIT B

<https://www.fedex.com/shipping.html en PrintFrame.html>

From (347) 556-5470
Douglas Ewing
Evergreen Distributors
72 Longview Road

Port Washington, NY 11050



Ship Date: 21AUG13
ActWgt: 30.0 LB
CAD: 105508975/INET3430

Master# 381219010000066

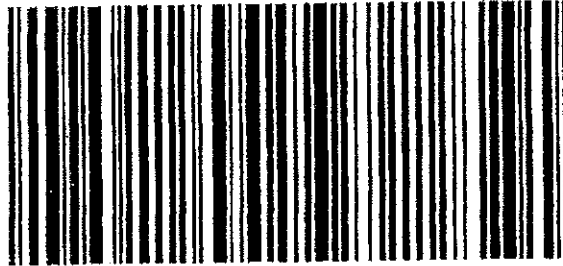
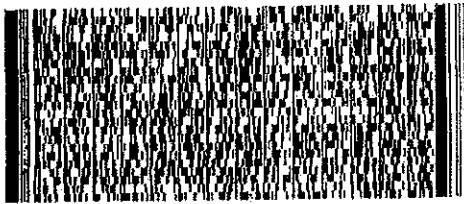
Invoice #
Reference #
PO #
Dept #
Ship ID

SHIP TO: (228) 257-3841

Jamaal
Wholesale Outlet

2710 South 11th St

BEAUMONT, TX 77701



(9612019) 3812190 10000166

GND

019

17

Prepaid

of

20

15

EVERGREEN DISTRIBUTORS, LLC
 7197 Hwy 61, P.O. Box 3325
 Saint Francisville, LA 70775

Starco Impex Wholesale Outlet
 2710 S 11th St
 Beaumont, TX 77701

Invoice # 08221

Invoice Date 08/22/20

Due Date 08/22/20

4: Zig Zag 44s 2661 44s (800)

23.00 800.00 18,400.00

EZ Wider Double Wide 25s 1.25

43.00 800.00 34,400.00

NOTES: FedEx Tracking numbers below;

381219010000104
 381219010000111
 381219010000128
 381219010000135
 381219010000050
 381219010000289
 381219010000074
 381219010000081
 381219010000098
 381219010000005
 381219010000012
 381219010000029
 381219010000036
 381219010000043
 381219010000180
 381219010000173
 381219010000166
 381219010000159

WHOLESALE OUTLET
 2710 S 11TH ST
 BEAUMONT TX
 77701-7601-70
 173-3050
 ETP:29
 961201938121 4016000159

WHOLESALE OUTLET
 2710 S 11TH ST
 BEAUMONT TX
 77701-7601-70
 173-3050
 ETP:29
 961201938121 4016000159

WHOLESALE OUTLET
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 77701-7601-70
 173-3050
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 961201938121 4016000159

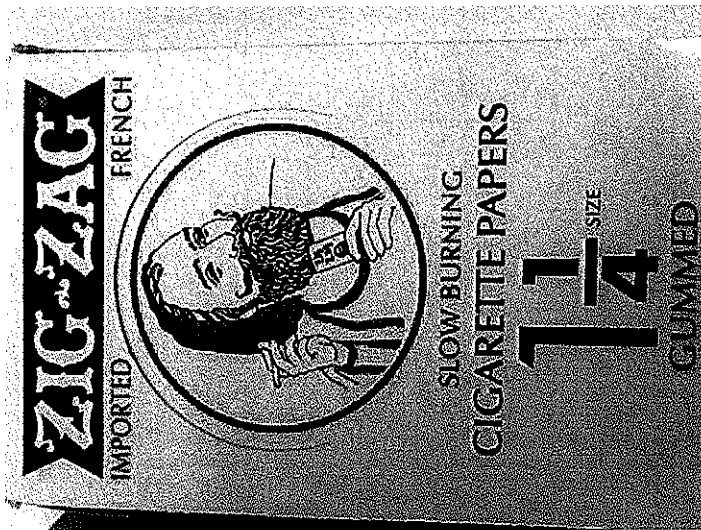
8/27/13

381219010000142
381219010000234
381219010000227
381219010000210
381219010000203
381219010000197
381219010000067
381219010000272
381219010000265
381219010000258
381219010000241

Subtotal	52,800.00
Total	52,800.00
Amount Paid	0.00
Balance Due	\$52,800.00

EXHIBIT C

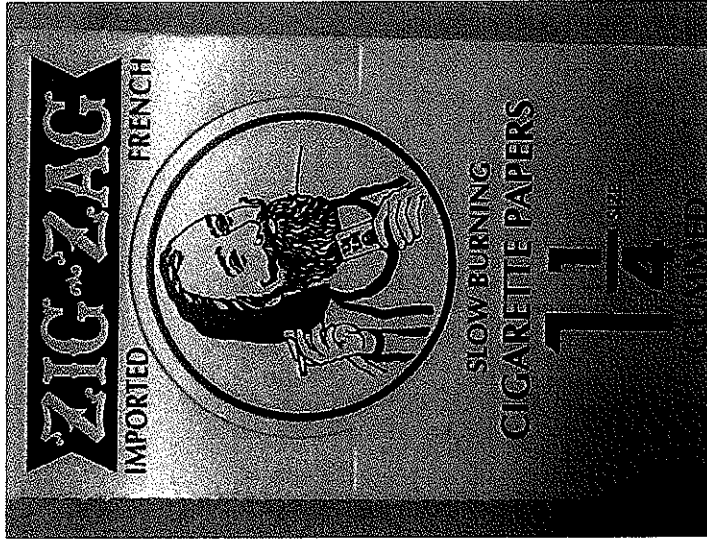
COUNTERFEIT



Top view of carton of counterfeit
ZIG-ZAG® Orange distributed by
the Evergreen Defendants

- Poor quality printing
- Not coated with characteristic ultra-violet varnish

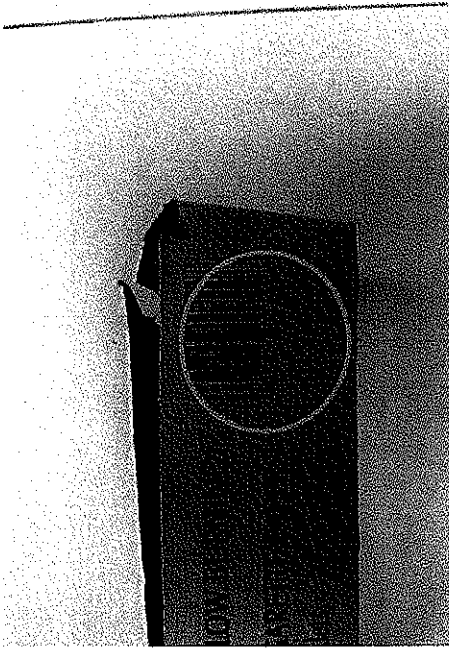
AUTHENTIC



Top view of carton of authentic
ZIG-ZAG® Orange distributed
by North Atlantic

- High quality printing
- Coated with characteristic ultra-violet varnish

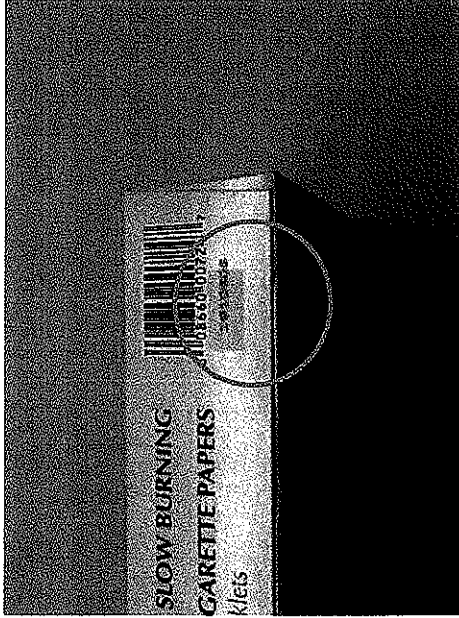
COUNTERFEIT



Side view of carton of counterfeit
ZIG-ZAG® Orange distributed by
the Evergreen Defendants

- Poor quality printing
- Not coated with characteristic ultra-violet varnish, and does not contain small unvarnished area with serial number beneath UPC code

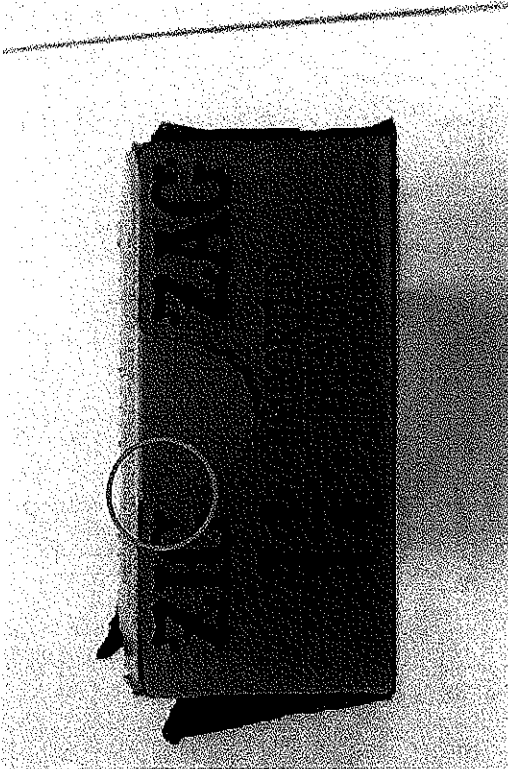
AUTHENTIC



Side view of carton of authentic
ZIG-ZAG® Orange distributed
by North Atlantic

- High quality printing
- Coated with characteristic ultra-violet varnish, except for small unvarnished area with serial number beneath UPC code

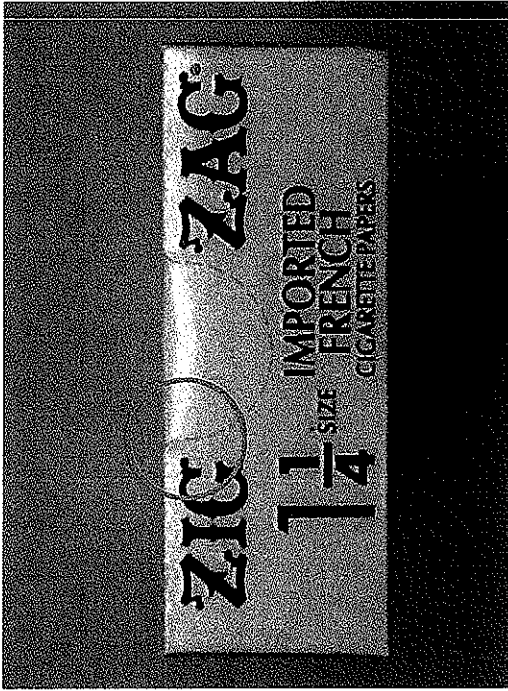
COUNTERFEIT



Side view of carton of counterfeit
ZIG-ZAG® Orange distributed by
the Evergreen Defendants

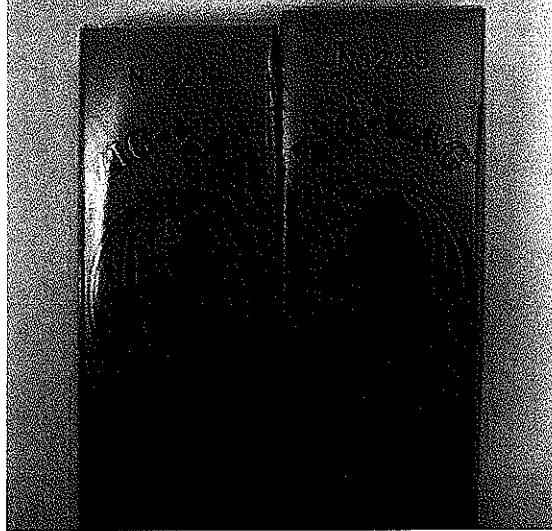
- Poor quality printing
- Not coated with characteristic ultra-violet varnish
- Straight corners on perforated openings on side of carton

AUTHENTIC



Side view of carton of authentic
ZIG-ZAG® Orange distributed
by North Atlantic

- High quality printing
- Coated with characteristic ultra-violet varnish
- Rounded corners on perforated openings on side of carton

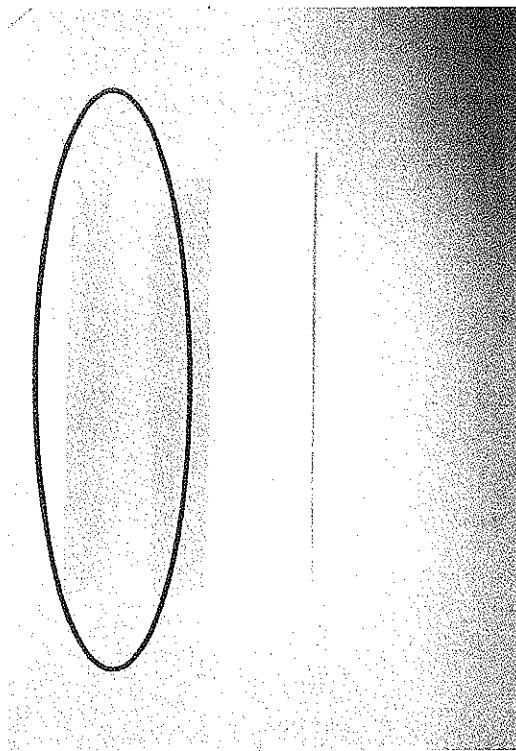


On LEFT: Booklet of authentic ZIG-ZAG®
Orange distributed by North Atlantic

On RIGHT: Booklet of counterfeit ZIG-ZAG®
Orange distributed by the Evergreen Defendants.

- Laid flat, the counterfeit booklet is slightly longer than the authentic booklet

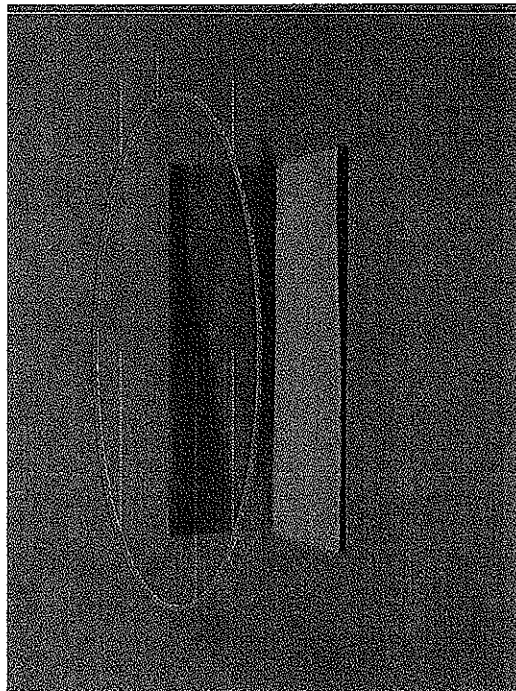
COUNTERFEIT



**Counterfeit ZIG-ZAG® Orange papers
distributed by the Evergreen Defendants**

- Printed, false watermark
- Thick, yellowed glue

AUTHENTIC

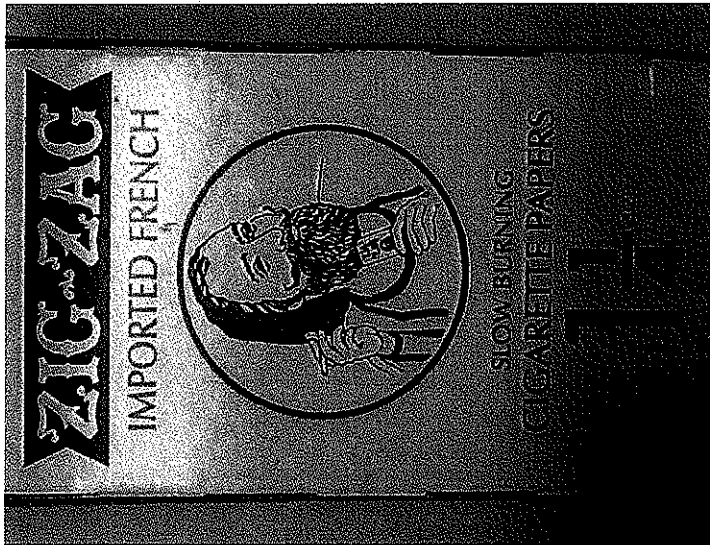


**Authentic ZIG-ZAG® Orange papers
distributed by North Atlantic**

- Actual watermark
- Thin, transparent glue

EXHIBIT D

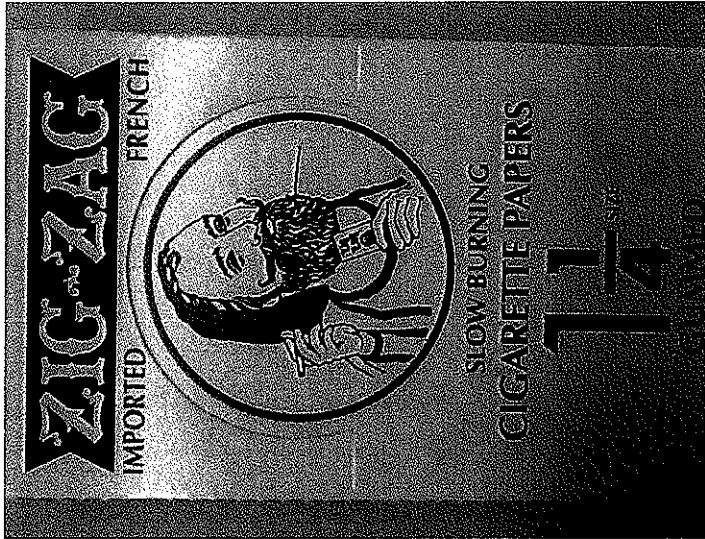
COUNTERFEIT



Top view of carton of counterfeit
ZIG-ZAG® Orange distributed by
the Hookah Plus Defendants

- Poor quality printing
- Not coated with characteristic ultra-violet varnish

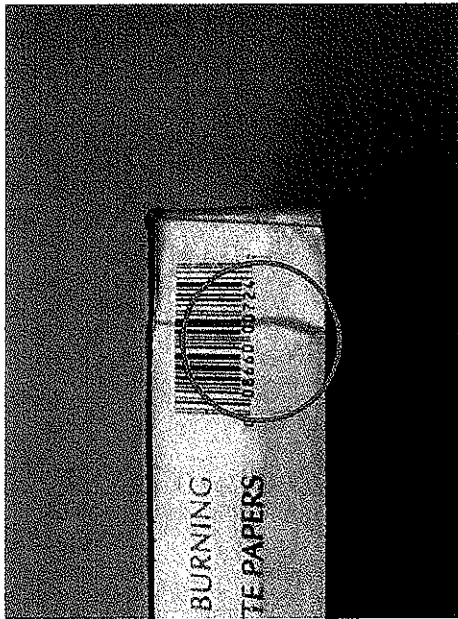
AUTHENTIC



Top view of carton of authentic
ZIG-ZAG® Orange distributed
by North Atlantic

- High quality printing
- Coated with characteristic ultra-violet varnish

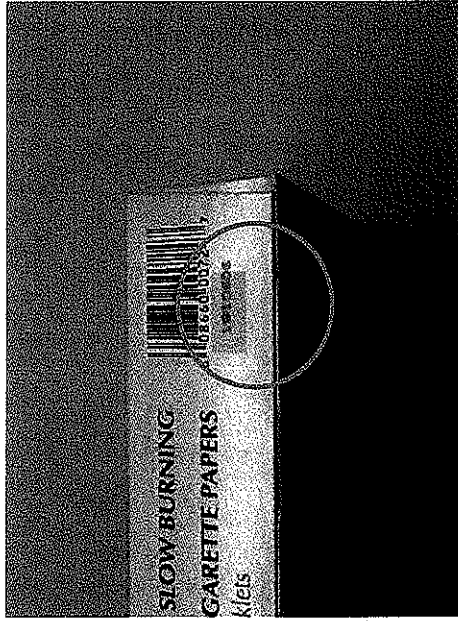
COUNTERFEIT



Side view of carton of counterfeit
ZIG-ZAG® Orange distributed by
the Hookah Plus Defendants

- Poor quality printing
- Not coated with characteristic ultra-violet varnish, and does not contain small unvarnished area with serial number beneath UPC code

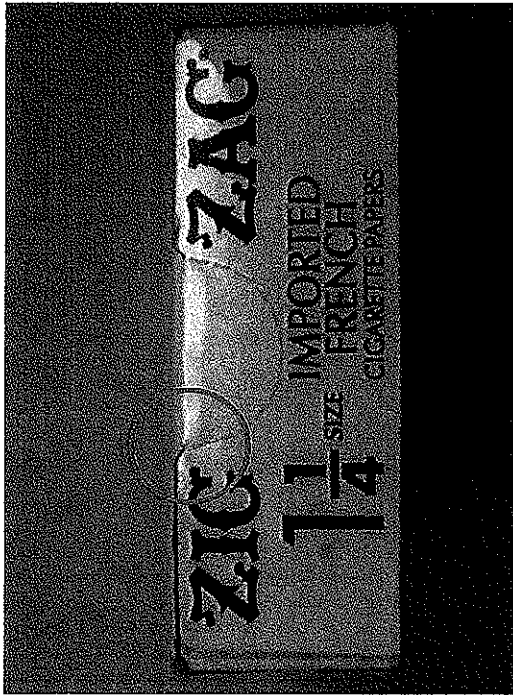
AUTHENTIC



Side view of carton of authentic
ZIG-ZAG® Orange distributed
by North Atlantic

- High quality printing
- Coated with characteristic ultra-violet varnish, except for small unvarnished area with serial number beneath UPC code

COUNTERFEIT



Side view of carton of counterfeit
ZIG-ZAG® Orange distributed by
the Hookah Plus Defendants

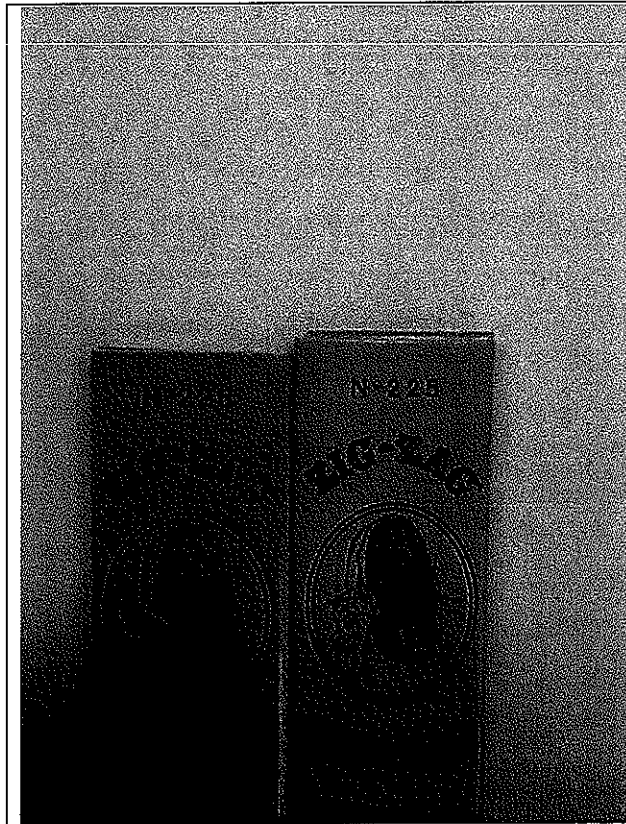
- Poor quality printing
- Not coated with characteristic ultra-violet varnish
- Straight corners on perforated openings on side of carton

AUTHENTIC



Side view of carton of authentic
ZIG-ZAG® Orange distributed
by North Atlantic

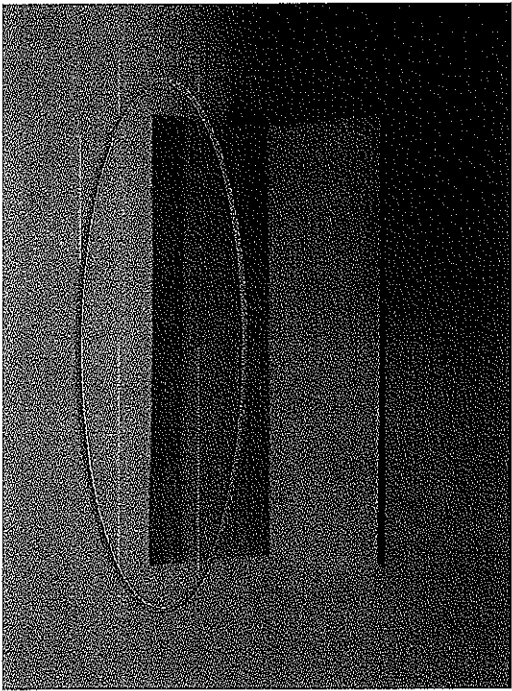
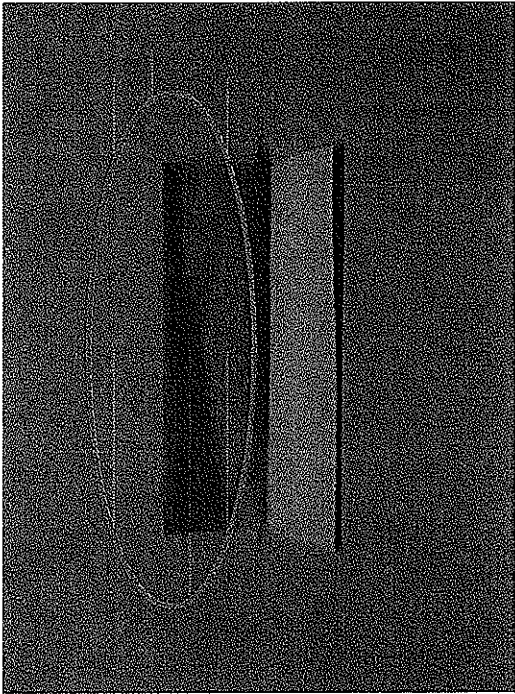
- High quality printing
- Coated with characteristic ultra-violet varnish
- Rounded corners on perforated openings on side of carton



On LEFT: Booklet of authentic ZIG-ZAG®
Orange distributed by North Atlantic

On RIGHT: Booklet of counterfeit ZIG-ZAG®
Orange distributed by the Hookah Plus
Defendants

- Laid flat, the counterfeit booklet is slightly longer than the authentic booklet

<p><u>COUNTERFEIT</u></p>		<p>Counterfeit ZIG-ZAG® Orange papers distributed by the Hookah Plus Defendants</p> <ul style="list-style-type: none">• Printed, false watermark• Thick, yellowed glue
<p><u>AUTHENTIC</u></p>		<p>Authentic ZIG-ZAG® Orange papers distributed by North Atlantic</p> <ul style="list-style-type: none">• Actual watermark• Thin, transparent glue